

Determination 2026/032

An authority's proposed decision to add a natural hazard entry on a record of title following subdivision

12 Bellevue Heights, Nelson

Summary

This determination considers an authority's proposed decision to transfer a natural hazard entry onto a property's record of title as a result of a subdivision. The determination discusses the relevance of the location of the building work that gave rise to the entry in relation to the area of land proposed to be transferred.

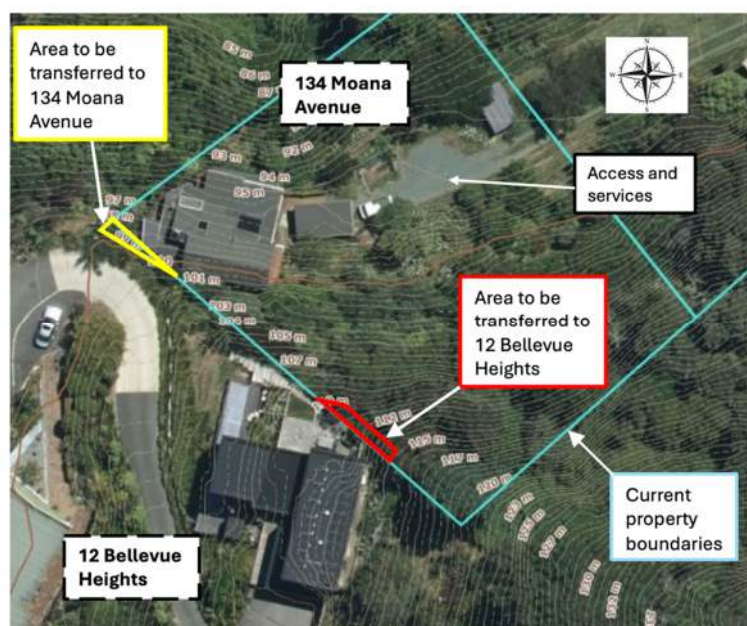


Figure 1: Approximate location of areas proposed to be transferred (not to scale)¹

¹ Based on the owners' boundary adjustment plan (dated 6 October 2024, revision 1) and the topographical/GIS map provided by the authority. The plan also includes a minor offset to the south, not shown in Figure 1.

In this determination, unless otherwise stated, references to “sections” are to sections of the Building Act 2004 (“the Act”).

The Act and the Building Code (Schedule 1 of the Building Regulations 1992) are available at www.legislation.govt.nz. Information about the legislation, as well as past determinations, compliance documents (eg, Acceptable Solutions) and guidance issued by the Ministry, is available at www.building.govt.nz.

1. The matter to be determined

- 1.1. This is a determination made under due authorisation by me, Rebecca Mackie, for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment (“the Ministry”).²
- 1.2. The parties to the determination are:
 - 1.2.1. P Francis, N Francis, and Sharp Tudhope Trustee Services No 28 Limited, the owners of 12 Bellevue Heights and applicants for this determination (“the owners”)
 - 1.2.2. Nelson City Council, carrying out its duties as a territorial authority or building consent authority (“the authority”).
- 1.3. This determination arises from a dispute between the parties as to whether a natural hazard entry relating to building work on a neighbour’s property is required to be transferred onto the owners’ record of title, as a result of a proposed subdivision and land transfer between the owners and neighbour.
- 1.4. Accordingly, the matter to be determined, in terms of section 177(1)(b) and (2)(a), is the authority’s proposed decision to transfer a natural hazard entry on the record of title relating to building work on 134 Moana Avenue to the record of title for 12 Bellevue Heights.

Issues outside this determination

- 1.5. The authority’s decision in 1994 to grant the building consent for the work at 134 Moana Avenue subject to a section 36 notice under the Building Act 1991 (“the 1991 Act”), and the natural hazard entry added to the record of title at that time, are not matters considered in this determination.

2. Background and building work

- 2.1. In February 1994, building consent BC 931439 was granted by the authority for a new dwelling at 134 Moana Avenue under section 36(2) of the 1991 Act.

² The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

A geotechnical report supporting the application for building consent had identified a position for a building platform on the site which was free from land slippage. The report noted this building platform was located “just outside of and immediately adjacent to the active Tāhunanui slump”, and that if site access and services to the building platform were to be added from Moana Avenue to the northeast, that work would be subject to land slippage. The consent was subsequently approved and the dwelling constructed, with access and services provided from Moana Avenue to the northeast of the dwelling.³

- 2.2. Because the building consent was issued under the natural hazard provisions of the 1991 Act, in May 1994 an entry had been added to the record of title for 134 Moana Avenue, as required by that Act. The entry states: “a building [consent] has been issued in respect of a building on the within land that is subject to Section 36(2) [of the 1991 Act]”.
- 2.3. The particular natural hazard is not specified in the entry on the title, as it was not required to be by the 1991 Act.⁴ However, the authority has referred to the particular natural hazard in this case as being slippage/land instability.
- 2.4. In 2020 a new dwelling was constructed on neighbouring 12 Bellevue Heights. The building consent for this building work was not granted under the natural hazard provisions, so was not subject to a notice on the title.
- 2.5. In June 2024, the owners entered into discussions with the authority regarding a proposed boundary adjustment between the neighbouring properties, where a small part of 134 Moana Avenue was to become part of 12 Bellevue Heights and vice versa.
- 2.6. The owners and their neighbour at 134 Moana Avenue entered into an ‘Agreement for Land Exchange’ in May 2026. The area of land to be transferred from 134 Moana Avenue to 12 Bellevue Heights is approximately 7m² (0.7m wide x 10m long). The parties have referred to this as “the strip”; I will also use this term. The strip is the area bound in red in Figure 1.
- 2.7. In their correspondence with the owners, the authority expressed an intention to transfer the natural hazard entry on the title of 134 Moana Avenue to the record of title of 12 Bellevue Heights, if the proposed land transfer goes ahead. The reason given by the authority for this decision was that it believes:⁵

...it is entirely reasonable in these circumstances to treat the strip of land as intimately connected with the building works that triggered the hazard notice and require up to date evidence that the hazard no longer exists on this strip of land, or adequate protection has been made to protect the land, building work or other

³ A code compliance certificate for the building work was issued by the authority in February 2001.

⁴ Whereas section 73(3) of the (2004) Act states “The notification under subsection (1)(c) must identify the natural hazard concerned”.

⁵ As stated in the authority’s email to the owners of 7 July 2025.

property, in order for the notice to be removed. The geotechnical reports from the mid-1990s that you refer to are not adequate for this purpose. This strip of land is in very close proximity to the Tāhunanui Slump hazard overlay and there have been numerous slips in the near vicinity in weather events since the mid-1990s (eg 2011 and 2022).

- 2.8. The authority suggested up-to-date geotechnical information be provided to support the owners' proposition that the strip is not subject to a natural hazard, as the original geotechnical information completed for the building consent is the only site-specific information available.

3. Submissions

The owners

- 3.1. The owners submit (in summary) that the section 36(2) notice from the original building consent for 134 Moana Avenue applies only to the driveway and buried services, and that the dwelling itself was excluded as it sits on a geotechnically-certified building platform clear of the hazard.
- 3.2. With regard to the strip proposed for transfer, the owners state:
- 3.2.1. The strip "is not intimately connected to the driveway or buried services identified in the original consent, and therefore the [section 36(2) notice] should not extend to our title."
- 3.2.2. The strip is approximately 30 metres away from the access and buried services.
- 3.2.3. No hazard has occurred on the strip, including during recent major weather events, and "even if a hazard were to occur it would not be of significant scale due to the strip's minor size and peripheral location".

The authority

- 3.3. The authority submits (in summary):
- 3.3.1. The owners have not provided evidence confirming the strip is not subject to a natural hazard, and that it "has inadequate information to make this decision".
- 3.3.2. The section 36 notice had been issued "in regard to the hazard's potential effect on land intimately connected within the scope of the building consent, being the access and services". The geotechnical report from 33 years ago "does not confirm that a hazard exists or doesn't exist on the [strip]".

3.3.3. The “Nelson region has been subject to significant weather events, including in 2011 and 2022 with both events resulting in significant effects to the property of 134 Moana Avenue and to a lesser effect, 12 Bellevue Heights”.

3.3.4. The authority followed Ministry guidance about the natural hazard provisions of the Act, which states:⁶

For a [building consent authority] to agree that an entry should be removed, evidence will need to be provided that the hazard no longer exists, or that adequate provision to protect the land, building work, or other property, or to restore any damage to the land or other property, has now been made. This may require a specialist report along with any other relevant evidence.

3.3.5. The strip is intimately connected with the building work at 134 Moana Avenue as the Ministry’s guidance “highlights that it is reasonable to assume the entire section or lot for residential sections can be considered intimately connected”. In addition, if the strip “did fail, there is a possibility the building work [at 134 Moana Avenue] would be affected”.

3.3.6. Although the land area of 134 Moana Avenue is 7000m², “the dwelling area and the location of [the strip] are in close proximity and directly above the dwelling [at 134 Moana Avenue], akin to a residential property on the Tāhunanui hillside”.

3.3.7. Given the age of the geotechnical report, the recent slope failures on both properties and the increased geotechnical understanding of Tāhunanui Slump, it is reasonable to require geotechnical confirmation that the strip is not affected by a natural hazard.

4. Discussion

Subdivision of a property with a natural hazard entry on the title

4.1. The purposes of the natural hazard provisions in the Act (sections 71 to 74, formerly section 36 of the 1991 Act), including the purposes of the entry made on a property’s record of title, have been discussed in previous determinations.⁷

4.2. Pursuant to the transitional provisions in the Act, an entry on a title under section 36(2) of the 1991 Act, as is the case here, is treated as if it had been made under the 2004 Act.⁸ Section 74(3) and (4) of the Act provide the process for removal of an entry if an authority subsequently determines that an entry against a record of title is “no longer required”.

⁶ Ministry of Business, Innovation and Employment. *Natural Hazard Provisions. Guidance on complying with Sections 71 to 74 of the Building Act 2024*. Version 1, October 2023 at page 29.

⁷ For example, Determination 2024/025 *An authority’s decision to grant building consents under section 72* (25 June 2024) at [6.3]-[6.12].

⁸ Section 434.

- 4.3. The situation where a property with a natural hazard entry on a record of title is subdivided was considered in Determination 2026/010,⁹ which states:

4.15 Where land with such an entry on its record of title is subdivided, the entry will be carried forward to the records of title for each of the new subdivided allotments.¹⁰ This is because the original title is for all of the land that makes up the allotment and the entry on the record of title is not required to differentiate or identify the land that relates to the building work.

...

4.18 ... There are no provisions in the Building Act or the Resource Management Act that explicitly require authorities, when making decisions about subdivisions, to consider whether an entry against a title concerning a natural hazard should be passed down to any new records of title.

4.19 However, section 74(3) does give building consent authorities an opportunity and mechanism to consider and determine whether an entry on a record of title is no longer required. In the context of a subdivision, this could arise in various situations, such as where a property owner has commissioned improved site-specific modelling to demonstrate a hazard is not 'likely' on their land or has carried out work to mitigate the risks of the hazard. ...

- 4.4. Regarding the relationship between the entry on the title and the building work (and building consent) that triggered the entry, and the test for removal in section 74(3), Determination 2026/010 states:

4.22 It is clear from the provisions in sections 71 to 74 and section 392 that an entry made on the record of title for a property is specific to the building consent described in the notification and the building to which that consent relates and the land on which the building work is carried out.

4.23 ... In my view relevant considerations to whether the entry is no longer required are the building work for which the building consent was granted and the identified natural hazard insofar as it relates to the building and land on which the building work was carried out.

4.24 ...while an entry made against the title for the original allotment is attached to the entire allotment as described by the title, for the purposes of the Building Act it does not relate to the entirety of the land in all cases. For the purposes of the Building Act, the entry instead refers to the building consent described in the notification and the effects of that entry are confined to the building and land where the building work was carried out, and land affected by the building work (if any).

- 4.5. Determination 2026/010 also set out some different subdivision scenarios and the factors relevant to considering whether an entry on a title is no longer required:

⁹ Determination 2026/010 *An authority's decision to refuse to remove a natural hazard entry on a record of title following subdivisions of the original property* (26 March 2026) from [4.1].

¹⁰ This entry can be pursuant to section 72 of the 2004 Act or section 36 of the 1991 Act, and the same process would apply to entries recorded on titles under either.

4.29 ... In an alternative scenario, the new child allotment may be created without the building work falling within the child allotment's boundaries. Although the new allotment may still be likely to be subject to the identified natural hazard, because the original building work is all now within 'other property' (as it is defined by the Act), ie the land on which the building work was carried out is not within the child allotment, the entry would no longer be required on the child title.

4.30 These examples are given to demonstrate the nature of the factors to consider when assessing whether an entry against a record of title is no longer required under section 74(3). They are not intended as definitive and in each case an authority must consider the particular factors that apply to the property in respect of which a request to remove an entry has been made. However, in all situations, a primary consideration will be whether the building consent that led to the entry being recorded against the title, and building work covered by that consent, were granted and carried out on land that is either fully or partially within the allotment being considered.

...

4.33 ... the assessment of whether an entry on a title is no longer required should consider the building work the entry relates to and the land on which that work was carried out. The entry should not be treated as a 'blanket' entry applying to the entire parcel of land or as applying to any other building work than that covered by the building consent to which the entry relates.

Whether the entry is required to be transferred to the owners' title

- 4.6. Therefore, in assessing whether the entry is no longer required (ie does not need to transfer to the title for 12 Bellevue Heights), the primary consideration is whether the building consent that led to the entry being recorded against the title for 134 Moana Avenue, and building work covered by that consent, were granted and carried out on land that is either fully or partially within the allotment being considered.
- 4.7. One of the scenarios set out in Determination 2026/010 is where the building work falls outside the new allotment's boundaries. Even if the new allotment may still be likely to be subject to the natural hazard, because the original building work is now all within 'other property', as defined in the Act, the entry would be no longer required on the new title.
- 4.8. The same reasoning applies in the present case, as after the proposed subdivision the strip would be part of 'other property'. The entry on the owners' record of title would relate to the building work covered by the building consent to construct the dwelling at 134 Moana Avenue, together with its access and services to the northeast of the dwelling. It was the latter that was on land subject to a natural hazard and the reason the building consent was granted subject to the section 36 notice on the title. The strip is some distance to the southeast from that building work and the land intimately connected with that building work.

- 4.9. The authority says the owners have not provided any evidence confirming the strip is not subject to a natural hazard and refers to the Ministry guidance in support of its position (paragraph 3.3.4 above). However, that guidance relates to considering removal of an entry from the title of the property where the building work was carried out. This would apply if, for example, the neighbour at 134 Moana Avenue was seeking to remove the entry from the title to their property, which is not the case. The guidance quoted does not address the situation arising here, nor that arising in Determination 2026/010, in which a property subject to a entry was subsequently subdivided, some parts of which related to the building work and consent resulting in the entry, and other parts which did not.
- 4.10. The authority also says that if the strip failed there is a possibility the building work at 134 Moana Avenue would be affected. However, this is not a relevant consideration regarding the transfer of the entry to the owners' title. As discussed in Determination 2026/010, an entry on a title should not be treated as a 'blanket' entry applying to land in isolation from the consented building work that gave rise to the entry. In any event, the entry on the title of 134 Moana Avenue will remain on that property's record of title. If the owners of 12 Bellevue Heights carry out major alterations or construct a new building in the future, the authority can consider the natural hazard provisions in relation to that building work at that stage.

Conclusion

- 4.11. On the basis that the area of land proposed to become part of 12 Bellevue Heights (ie the strip) is not the land on which the building work that was the subject of the relevant building consent was carried out, the natural hazard entry on the title for 134 Moana Avenue does not need to transfer to the title for 12 Bellevue Heights.

5. Decision

- 5.1. In accordance with section 188 of the Building Act 2004, I determine that the natural hazard entry on the record of title for 134 Moana Avenue is not required to be transferred to the record of title for 12 Bellevue Heights, and I reverse the authority's proposed decision.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 9 September 2026.

Rebecca Mackie

Principal Advisor Determinations